



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,635	08/30/2001	Steven Harold Cary	AUS9-2001-0646-US1	9077

40412 7590 03/14/2006

IBM CORPORATION- AUSTIN (JVL)  
C/O VAN LEEUWEN & VAN LEEUWEN  
PO BOX 90609  
AUSTIN, TX 78709-0609

EXAMINER

GRAYSAY, TAMARA L

ART UNIT PAPER NUMBER

3636

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

### DETAILED ACTION

Newly submitted claims 1-20 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-20 as originally filed, drawn to a method, system, and computer media for analyzing data, classified in class 705, subclass 10.
  - II. Claims 1-20 as presented in the 12 December 2005 reply, drawn to a method, system, and computer media for selecting a vendor, classified in class 705, subclass 8.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)).

- a. In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination as presented in the 12 December 2005 amendment does not require the adjusting step to be based on the conditional step of *determining whether* the data source *is balanced* but rather requires the adjusting step to be based on the step of *determining that* the data source *is not balanced*. In other words, the amended claims no longer include the condition whereby the determining step reveals a balanced data source.

- b. The subcombination has separate utility
  - i. such as determining that the data source is balanced,
  - ii. such as without analyzing the data source using the more balanced data source, and
  - iii. such as without selecting a data source vendor.

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification and require a different field of search (see MPEP § 808.02) restriction for examination purposes as indicated is proper.

4. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Art Unit: 3636

*Conclusion*

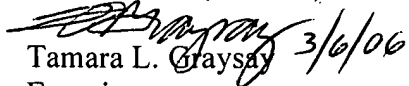
5. The amendment filed on 12 December 2005 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because the claims are directed to a combination method, system, and computer program product stored on a computer operable media that no longer requires the conditional step or means for determining whether the data source is balanced, but rather only determines that the data source is not balanced.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is 571-272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo, can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tamara L. Graysay  
Examiner  
Art Unit 3636

20060303